Workmen's Compensation and Employer's Liability Insurance in Ohio

by

E. W. DAVIS

Address before

THE INSURANCE FEDERATION OF OHIO

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Mr. Toastmaster and Gentlemen:

Let it be understood distinctly that anything I may say on the subject of Workmen's Compensation is not to be construed as in criticism either of the principle of compensation or of the Industrial Commission of Ohio. I am acquainted with the members of that Commission and know they are doing all they can to administer the present law fairly and honestly; but it is an impossible thing to make an imperfect law perfect solely through the medium of its administration. I am sure the Commission will welcome constructive criticism of the law. This great subject has occupied the thought of legislators and statesmen the world over for nearly thirty years past; but notwithstanding the length of time that it has been studied and tried out in Europe and some states of our Union, no law has yet been devised that has proven entirely satisfactory. Therefore, it would be absurd to regard our present Compensation Law as perfect in every respect. On the contrary it is defective in several vital respects; and it is to these defects, as I see them, that I will call your attention.

The statement has been made that the Insurance Federation of Ohio was organized for the sole purpose of defeating the principle of workmen's compensation in this State. The person responsible for that statement has either deliberately misrepresented the facts or has been misinformed as to our attitude. Our organization stands squarely upon the proposition that the principle of workmen's compensation is just and humane, and that the old system of "employer's liability" is antiquated and totally unfit to meet modern industrial conditions and should be relegated without delay to the ash heap. If any fighting is to done by the Federation on this subject it will be along the lines of establishing the principle of workmen's compensation, but, at the same time, with the object of securing for our people a law fair to all concerned—one devised along broad and comprehensive lines. Our work is to be constructive and not obstructive.

The attitude of the Federation upon the subject of workmen's compensation is clearly expressed in a resolution adopted at our afternoon meeting to-day. We believe that the only excuse for state insurance must be the ability of the state to insure its patrons more efficiently and more cheaply than private organizations. Whether or not this can be accomplished by the State can be determined only through competition. Private organizations, therefore, should be afforded an opportunity for honest competition under reasonable State supervision and control. And if it should be proven through the process of such competition that the exclusive State plan is right and that the competitive system is wrong, then, to quote the words of our President, Mr. Diggs, "The insurance men of this State will go down like men," with the full assurance that a system that is wrong cannot endure and with a feel-

ing that they have, as God-fearing, hard-working citizens of the State, been given a fair and a square deal. They would then turn their attention to other lines offering a more lasting and substantial growth of their business.

The present Compensation Law unquestionably is not satisfactory to either employer or employe or to the citizenship of our State in general.

The compensation actually furnished injured workmen under the operations of the law is inadequate and should be increased. We should always bear in mind that compensation for accidents should be placed on a basis of average justice between employer and employe. The employe should also be given some right of appeal from the decision of the Industrial Commission as to the sufficiency of awards—a right that is denied him under the present law.

Every employer should be compelled to come under the terms of the law; but he should be given the right to purchase protection either from the State, or a private company, or through a mutual organization, or be permitted to carry his own risk, if financially able to do so. The whole system, however, should be under proper State supervision and control. In other words, the plan should be compulsory upon every employer as to payment of compensation, but optional as to the manner in which the protection is to be secured.

Under the terms of our present Compensation Law the employer is subject to suit upon the mere allegation that the accident was due to his wilful act or his failure to comply with some lawful requirement; and the employer is forbidden, under the law, to purchase insurance affording protection against such suits. An attempt has been made to justify this provision of the law on the ground that it would be against public policy to permit employers to purchase protection of this character, that, for instance, if employers could insure against such hazard they would become careless in the matter of accident prevention. If this be true, the contention can be made with equal force that it would be against public policy to permit an owner to purchase protection against the destruction of his home by fire, because such protection would operate to make the owner careless in the matter of fire prevention and because through such carelessness much loss of property by fire might result. This contention is too absurd to be given serious consideration. One of the important functions of compensation law should be the elimination of lawsuits. Employers therefore should be permitted to insure against such hazard, because the employer who is unable to purchase such protection is very largely at the mercy of the unscrupulous lawyer. That lawyer knows that the employer who has no protection would hesitate to chance the uncertainty of litigation, and the result is that many "hold-up" claims are made. If, on the other hand, the lawyer knew that the employer carried insurance against such contingency and that he would be met with strong resistance, he would hesitate to start a groundless suit. Nearly all suits of this kind are

taken on a contingent basis; and the fact that the lawyer would be obliged to advance the costs, to say nothing of the time, involved in such litigation, together with the guarantee of strong resistance from the start to the final determination of the issue in the court of last resort, would make him less eager to start a fight.

I have known of instances where the employer's inability to secure protection against such suits has seriously affected his credit. Shortly after the present law became effective, I was called to the telephone by one of our Cleveland contractors. Our office at Cleveland has written the bonds required from time to time by this contractor for a number of years past. We know him to be a man of ability and of some, although not large, financial responsibility. He has always met his obligations promptly. At times, however, when payments of estimates have been delayed, it has been necessary for him to borrow from his bank to meet his payroll, and his bank has always been willing to care for his needs in this respect. Owing to the fact, however, that under the new law an employer cannot secure protection against this very serious open liability, further credit was denied him by his bank from the first of the year. This is only one of a number of similar cases that have come under our observation.

We contend that it would be to the interest of the injured workman who has a legitimate claim under the open liability provision of the law, to permit the employer to secure a contract of re-imbursement against such loss. In legitimate cases, neither the employe nor the lawyer fear litigation. They should be and are interested in knowing whether or not the employer will be able to pay when judgment is obtained. To permit the employer to cover this hazard would be to discourage improper claims because of the resistance afforded under a contract of re-imbursement and would also operate to insure, in legitimate cases, payment of damages when awarded at the termination of litigation to those who are entitled to such payment. Consequently, if the law cannot be changed to eliminate entirely all suits for damages, the employer should be permitted at least to provide against a possible heavy loss through his liability for damages. Surely it is not fair to make it compulsory upon the part of every employer to pay when compensation is demanded, while the option to accept it or sue at law is given to the employe without at least permitting the employer to provide protection against loss if the employe refuses the compensation.

Not only the attitude of the Federation, but also the position of the companies has been either misrepresented or misconstrued on this subject.

The insurance companies do not oppose, but strongly favor compulsory workmen's compensation.

Insurance companies offered, urged and issued workmen's compensation insurance in the form of workmen's collective policies, long before compulsory workmen's compensation laws were enacted or proposed.

The insurance companies do not oppose state management of workmen's compensation insurance.

Insurance has been managed with as much economy and efficiency as any business. It has constantly been fitted to the risks of the people to relieve them in their many perils. Its forms are so perfect, its uses so varied and its protection so complete, that insurance is indispensable in maintaining the welfare and security of the people.

Individual management of insurance has furnished less provocation for State management than individual management of any other business. There is less reason for expecting success and more reason for expecting disappointment and ultimate failure in State management of insurance than State management of any other business.

Nevertheless, as the State has commenced the experiment, insurance companies want it promoted and completely tested. If the State can serve the people better than the companies, in managing compensation insurance, the people will rejoice and the companies must submit to the new found service.

The test of service is possible only by the State and the companies competing in the service.

Insurance companies protest against the State driving them out of the field of insurance—the field the State is entering.

Let the State challenge the companies in a fair field with no favors. Square competition between the State and the companies will settle for employer and employe and for the people generally, which will serve them the better.

A State monopoly is as brutal and cowardly as a private monopoly. It will prove just as hateful to the people. A monopoly cannot demonstrate its relative merits or demerits, for it brooks no rival. It shuns comparisons. It prevents the supreme—the acid—test.

When the people can lose nothing and may gain so much, it is amazing that they allow the State to destroy its competitors. If insurance companies were tolerated, they could not compel patronage. Their service would not be accepted unless superior to the State. If they failed to demonstrate their superiority, they would be thrown in the discard, and they would have only their disappointment for their pains.

The State assumes and enforces its guardianship for the people in their supposed inability to deal with this kind of insurance for themselves. The State sets up its insurance business. It professes to know more about that business than those heretofore managing it. It professes such superiority over those patronizing insurance that it will not allow them to choose their insurance company. The State professes such concern over the machinations of its rivals in this business that it will not allow the people to deal with them. The State professes a wisdom superior to that of its people. The State says

its insurance is the best, and fearing its rivals may persuade the people it is not the best, the State prohibits the people from dealing with its rivals.

The State monopoly, like all other monopolies, covers its fear of competition with its boast of disinterested paternalism.

In the agitation over State compensation insurance, liability insurance companies have been grossly misrepresented.

The individuals identified with the business have been censured, scorned and insulted. They have been charged and falsely published and pictured as inventors and exploiters of a scheme to defeat injured workmen, to incite litigation, and to promote the interests of ambulance chasers, lawyers, insurance agents and court officials. We rank ourselves as decent citizens and resent this outrageous treatment.

Insurance companies do not make the laws. They have no influence in their making. The people are responsible for the laws regulating employers' liability. The old Employer's Liability system was inefficient, unjust, provoked doubtful litigation, expense, costs, delay, disappointment and generally odious conditions.

The liability law left the employer and employe in doubt between hope and fear over the possible prospect of big damages or no damages.

The employe might find he had no recourse for his injury. The employer was in peril of heavy damages for any injury.

Insurance companies did not create the peril of either. The law which was made and tolerated by the people was solely responsible for this condition.

Insurance companies are always seeking to serve in distributing the burdens incident to all the perils of humanity. So insurance companies offered insurance to both the employer and employe; to the employer on his risk of legal liability to his employe; to the employe on his risk of injury, regardless of his legal rights against his employer.

Insurance companies do not justify the liability laws. They do not minimize the odium attaching to those laws. Insurance companies assumed the risk of employers and then paid or defended according to the employer's duties or rights under the law.

The odium belongs not to the insurance companies, but to the law. Insurance companies were offering compensation, or so-called Workmen's Collective Insurance, and urging that hazardous industries should bear the burden of their injuries, long before the general agitation and adoption of that principle.

For employers and employes, legislators, public officials and others to point the finger of scorn and cry "Stop Thief!" at the insurance companies, is like condemning a protesting sheriff for executing an innocent victim of the law.

Of course abuses and instances of evil by insurance companies can be pointed out. But, speaking generally, it can be said without question, that

the treatment of injured employes by insurance companies has been more considerate and liberal than that accorded by employers who have settled claims out of their own pockets.

Litigation has been over either groundless or doubtful claims or claims for excessive damages. For every instance of litigation, insurance companies can show hundreds of claims voluntarily paid, where their own lawyers advised there was no liability whatsoever.

Compensation insurance is definite. It is removed from the realm of doubt and dispute which involves liability insurance. Compensation insurance furnished by companies is as free from litigation and disputes as compensation insurance furnished by the State. Compensation insurance inspires insurance companies to pay claims with the same promptness and liberality that characterize their payment of life, fire and casualty claims.

The innovation of compulsory compensation insurance wrought a wholesome change, but our State monopolized the management and prevented comparisons of service and then proclaimed State management to be the panacea for the evils of insurance companies, instead of compulsory compensation laws as the relief from liability laws.

The liability laws have not been repealed. The employer's liability is substantially the same and the new constitution has emphasized it by forbidding any limitation on the amount of damages recoverable after death.

Insurance companies and individuals identified with them have no particular interest in dictating, influencing or criticising the laws affecting employers and employes. They restrict their activities to their own legitimate functions of distributing the burdens of risks incurred under the laws, whatever the laws may be. Incident to that function is the duty to point out the risks of all.

The employer now has substantially the same liability as before the enactment of the compensation law.

The State does not insure the liability. The State will not allow insurance companies to insure the liability. The employer has a hope, not a guaranty, that the employe will accept the limited compensation and so release the larger liability.

If the employe chooses the liability, neither the employer nor employe has any benefit from the compensation fund.

The Federation realizes that this subject is one of vital importance to the entire citizenship of our State, and that it would surely be derelict in its duty if it failed to do everything in its power to bring about such amendments to the present law as will make the law acceptable to all concerned. To this end we offer our services to the people of the State in the hope that a satisfactory solution of this most difficult problem may be accomplished. Our attitude cannot and will not be one of indifference.

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